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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,109	11/03/2003	Dorothy Marie Hanes (Ooten)		5141

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EXAMINER

GRILES, BETHANY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/700,109

Applicant(s)

HANES, DOROTHY MARIE

Examiner

Bethany L. Griles

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 6/17/04 have been fully considered but they are not persuasive. Specifically, many of the features argued by the Applicant to define the Applicant's invention over the prior art of Ooten or Seay are not positively claimed in the immediate independent claim. For example, the Applicant does not positively claim that the notch allows the weight to be removable. If the features are not positively claimed, they cannot be used to reconsider the previous rejection.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Ooten US5775025.

Regarding claim 1, Ooten discloses a tear drop shaped planar floatant material having a wide top, a narrow bottom (col 2, line 46) having substantially flat front and back sides (col 2, line 54), a slot 2 centered vertically adjacent the narrow bottom portion having a top notch for receiving a fishing line and a bottom notch for receiving a weight 4; the weight 4 having a front and back extension (fig 3)

extending up from a conical base; the conical shaped base capable of interlocking with the bottom notch of the tear shaped floatant material (see fig 4). Regarding claim 4, Ooten discloses the tear drop shaped material is hollow (see fig 5).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ooten in view of Seay US 6550179.

6. Regarding claim 2, Ooten discloses the tear drop shaped floatant 1.

7. Ooten does not disclose a fin extending radially and vertically in the proximate center of the top portion of the front side and a fin extending radially and vertically on the back side of the floatant shaped material.
8. Seay discloses fins 36 extending radially and vertically from the front and rear sides of the floatant shaped material 24, 28.
9. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Seay to the invention of Ooten, as the fins would improve the bobber's movement through the water, which is disclosed by Ooten as one of the main features of the invention of Ooten.
10. Regarding claim 5, Ooten discloses the tear shaped floatant material.
11. Ooten does not disclose beads.
12. Seay discloses a bead 72.
13. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Seay to the invention of Ooten in order to create a noise-making device as it is notoriously old and well known in the art to employ various noise making devices in floats and lures.
14. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ooten in view of Christensen US5243780.
15. Regarding claim 3, Ooten discloses the tear drop shaped floatant material.
16. Ooten does not disclose a chamber for receiving a luminescent device or light stick.
17. Christensen discloses a luminescent device 36 and a method of holding it within the flotation device 14.

18. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Christensen to the invention of Ooten, as it is notoriously old and well known in the art to use luminescent markers or indicators on fishing floats to indicate strikes or the location of a fisherman's bait.

Conclusion

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

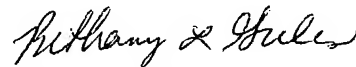
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703.308.2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


blg


Bethany L. Griles
Examiner
Art Unit 3643


Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

8/6/04